

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 646 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No
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STATE OF GUJARAT

Versus

POPATLAL N VORA

Appearance:

MR.M.A.BUKHARI, ADDL.PUBLIC PROSECUTOR for
Appellant.

SERVED for Respondent No. 1

MR PB MAJMUDAR for Respondent No. 3, 4, 5, 6, 7, 8

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 24/07/96

ORAL JUDGEMENT

The State has preferred this acquittal appeal

against the judgment dated May 9, 1988 in Criminal Case No.55/85 on the file of the learned Judicial Magistrate, First Class, Wadhwan whereby the learned Magistrate acquitted the respondents of the offences under section 7 read with section 16 of the Prevention of Food Adulteration Act, 1954.

Respondent No.1 was dealing in vegetable ghee, oil, grains, etc. in the city of Wadhwan at the relevant time. P.W.1, P.R. Panchal, who was the notified Food Inspector, visited the shop of the respondent-accused No.1 at about 10.15 a.m. on April 12, 1984 and collected sample of edible oil from the packed tin having label of 'Queen Brand Filtered Groundnut Oil' manufactured by Kaneria Oil Industries, Rajkot. The accused No.1 is said to have purchased the said tin containing edible oil under Bill No.197 dated April 2, 1984 from the respondent No.2. P.W.1, the Food Inspector collected the sample of edible oil weighing about 400 grams and packed it in equal part in three separate bottles. The bottles were sealed and slips bearing signatures of accused No.1 were pasted thereon. It was sent for analysis to Public Analyst at Bhuj on April 12, 1984. It was reported to be adulterated. A complaint was also lodged against the respondent-accused persons for the offence under section 7 read with sec.16 of the Prevention of Food Adulteration Act, 1954.

The respondent-accused pleaded not guilty.

The learned Magistrate having recorded the evidence and on appreciation thereof and other materials on record, held that the guilt of the accused persons was not proved beyond reasonable doubt and he ordered to acquit them as aforesaid.

Mr.M.A. Bukhari, the learned Addl. Public Prosecutor appearing for the appellant-State, has taken me through the impugned judgment and the evidence on record. He contended that the learned Magistrate committed error of law in not relying on the evidence of the Food Inspector. The Panch witness Chandulal Parshottam, has not supported the prosecution case. He has deposed at Exh.52 that he was called at about 10.30 a.m. on April 12, 1984 by the Food Inspector in the shop of the respondent No.1 where different kinds of oil and ghee etc. were being sold. He has further deposed that when

sample was taken, the accused No.1 was not present and the sample was taken in presence of the employee of the shop. The spoon through which the sample was taken from the packed tin was lying in the tin of castor oil and the said spoon was not properly cleaned. There is, therefore, material infirmity in the process of taking the sample of edible oil. On going through the evidence of P.W.1, Food Inspector and that of the Panch witness, there are material contradictions in the evidence. The Panch Witness, Chandulal Parshottam, has categorically deposed that he did not have the bottle in which the sample was collected and sealed. He further stated that he merely signed the Panchnama. The Panchnama was not read over to him. Panchnama Exh.42 does not support the evidence of the Food Inspector at Exh.47. In spite of this, the Panch witness was not declared hostile. The learned Magistrate, having considered all these infirmities, has rightly recorded the order of acquittal.

It is clear case of the accused No.1 that he had purchased the edible oil in question from the respondent No.2, Kaneria Oil Industries at Rajkot. A licence is prescribed for the sale of edible oil and the respondent No.2, Kaneria Oil Industries is duly licenced to manufacture edible oil. The respondent No.2 cannot therefore be deemed to have committed any offence pertaining to the sale of edible oil in question, as he had purchased the said edible oil from the licensed manufacturer, Kaneria Oil Industries, Rajkot.

Apart that, the Food Inspector has not produced the original bill of respondent No.2 which was collected from the accused No.1. There is a clear finding of the learned Magistrate that the muddamal sample was taken in absence of the accused No.1, vendor of the edible oil. The Panch witness has not corroborated the version of the Food Inspector.

In para 13 of the impugned judgment, the learned Magistrate has recorded that there is no reliable evidence that the Food Inspector, Shri P.R. Panchal, was duly qualified to be the Food Inspector in accordance with Rule 8 of the Prevention of Food Adulteration Rules, 1955. Besides, there is no evidence whether the bottles wherein the sample was collected were properly cleaned, inasmuch as one Mr. Gohil, who is said to have cleaned the bottles, has not been examined. Mr. Bukhari, the learned Addl. Public Prosecutor, has not been able to

assail all these findings successfully. There is, therefore, no reason to interfere with the impugned order of acquittal recorded by the learned Magistrate.

In the result, the appeal fails and is dismissed.
